**Law Enforcement & Security Officers, Local 40B (South Jersey Detective Agency)** *and* **Jon M. Richards.** Case 4-CB-4020

February 23, 1982

## DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On August 4, 1981, Administrative Law Judge Hubert E. Lott issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The facts are not in dispute. Charging Party Richards joined Respondent Union shortly after he commenced employment with South Jersey Detective Agency, the Employer herein, in November 1979. Respondent and South Jersey had been parties to a collective-bargaining agreement since August 15, 1979. When Richards joined Respondent, he did not receive copies of its contract with South Jersey or the health and welfare plan under which he was covered. When he asked South Jersey for the agreements, it referred him to Respondent. In December 1979, and again in January and March 1980, Richards asked Respondent Business Agent LaMania for copies of the documents. Each time, LaMania told him that he would receive them. He never did. Richards testified that he wanted to see the collective-bargaining agreement to find out if he were entitled to certain overtime pay and he wanted to see the health and welfare plan because he had incurred certain medical expenses and wanted to see if he should be reimbursed for them. Upon LaMania's instruction, Richards sent his medical bills to LaMania. He received reimbursement for some of these expenses but only after he had filed the charge in the instant case. He never received payment for the overtime or for other medical costs he had incurred and he did not know whether he was entitled to such payments.

While setting out the above facts, the Administrative Law Judge did not decide whether Respondent's failure to make available to Richards copies of the documents he had requested violated Section 8(b)(1)(A) of the Act. He found, instead, that the Labor-Management Reporting and Disclosure Act (LMRDA) at Title I, Section 104, and Title II, Section 210,[1] established an "adequate remedy" through the Secretary of Labor for Respondent's conduct. For this reason, the Administrative Law Judge recommended dismissal of the complaint. We cannot agree with the Administrative Law Judge that the LMRDA establishes an exclusive remedy for Respondent's failure to honor unit employee Richards' requests for copies of the collective-bargaining agreement and health and welfare plan affecting him. Moreover, we find that, by failing and refusing to make available these documents to Charging Party Richards, Respondent violated Section 8(b)(1)(A) of the Act.

As the Administrative Law Judge noted, the LMRDA does impose a duty on labor organizations to provide copies of collective-bargaining agreements to employees who are directly affected by such agreements, and who request such copies.[2] The LMRDA further empowers the Secretary of Labor to bring actions to enforce this provision of the LMRDA.[3] However, these provisions of the LMRDA do not supplant the rights and remedies provided by other Federal laws, and the very terms of the LMRDA so indicate. Thus, LMRDA,[4] Title I, Section 103, provides that:

> *Nothing in this title* [i.e., Title I, 29 U.S.C. 411-415] *shall limit the rights and remedies of any member of a labor organization under any* State or *Federal law* or before any court or other tribunal, or under the constitution and by-laws of any labor organization. [Emphasis supplied.]

And, further, we note that Congress included in the LMRDA, at Section 603,[5] an admonition which reaches virtually all of the LMRDA and which explicitly preserves a party's rights under the National Labor Relations Act. That provision states:

> 603 (a) *Except as explicitly provided to the contrary, nothing in this Act shall reduce or limit the responsibilities of any labor organization* or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, *under any other Federal law* or under the laws of any State, and, *except as explicitly provided to the contrary, nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled*

[1] See 29 U.S.C. § 414 and 29 U.S.C. § 440.

[2] See 29 U.S.C. § 414.

[3] See 29 U.S.C. § 440.

[4] See 29 U.S.C. § 413.

[5] See 29 U.S.C. § 523.

> *under such other Federal law* or law of any State.
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> (b) Nothing contained in titles I, II, III, IV, V, or VI of this Act shall be construed to supersede or impair or otherwise affect the provisions of the Railway Labor Act, as amended, or any of the obligations, rights, benefits, privileges or immunities of any carrier, employee, organization, representative, or person subject thereto; *nor shall anything contained in said titles (except section 505) of this Act be construed* to confer any rights, privileges, immunities, or defenses upon employers, or *to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.* [Emphasis supplied.][6]

These provisions of the LMRDA, which the Administrative Law Judge failed to note, clearly establish that the LMRDA does not preclude our consideration of the instant alleged violation of the National Labor Relations Act. We now proceed to such a consideration.

The Administrative Law Judge accurately observed that, because of a union's unique position as the exclusive bargaining agent of the employees it represents, it owes these employees a fiduciary duty to deal fairly with them.[7] Employees must rely on their union to represent them fairly in all matters covered by the collective-bargaining agreement, which controls the terms and conditions of their employment. However, when a union denies the employees it represents the opportunity to examine its agreement with their employer, it severely limits the employees' ability to determine whether they have been afforded the fair representation that is their due. In the instant case, Respondent's failure to make available to Charging Party Richards copies of its collective-bargaining agreement and its health and welfare plan[8] impeded his ability to understand his rights under those documents and hampered his ability to determine the quality of his representation under them. Accordingly, we find that Respondent's conduct fell short of fulfilling its fiduciary duty to deal fairly with the employees it represents and that by such conduct Respondent violated Section 8(b)(1)(A) of the Act.

[6] Sec. 505 of the LMRDA referred to above is not pertinent to this proceeding.

[7] See, generally, *Teamsters Local Union No. 122, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (August A. Busch & Co. of Mass., Inc.)*, 203 NLRB 1041 (1973); and *Local 3036 New York City Taxi Drivers Union, AFL-CIO (En Operating Corp.)*, 204 NLRB 427, 429 (1973).

[8] The components of a health and welfare plan clearly constitute "conditions of employment." See *Inland Steel Co. v. N.L.R.B.*, 170 F.2d 247, 251 (7th Cir. 1948); *Pacemaker Yacht Co., a Division of Mission Marine, Inc.*, 253 NLRB 828, 831 (1980).

## CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to make available its collective-bargaining agreement with South Jersey Detective Agency and its health and welfare plan under which he was covered to Charging Party Jon Richards, after he duly requested such documents, Respondent violated Section 8(b)(1)(A) of the Act.
4. The foregoing unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondent has engaged in an unfair labor practice affecting commerce, we shall order that Respondent cease and desist therefrom and take certain affirmative action deemed necessary to effectuate the policies of the Act. The affirmative aspect of the Order shall require Respondent to make available to Charging Party Richards copies of the collective-bargaining agreement and health and welfare plan he requested. In addition, Respondent shall be required to post an appropriate notice.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Law Enforcement & Security Officers, Local 40B, Ventnor, New Jersey, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Failing and refusing to make available, upon request, copies of its collective-bargaining agreement and health and welfare plan to unit member employees.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Make available to Charging Party Richards its collective-bargaining agreement and its health and welfare plan with his employer.

(b) Post at its business office copies of the attached notice marked "Appendix."[9] Copies of said

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

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notice, on forms provided by the Regional Director for Region 4, after being duly signed by the appropriate representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Deliver to the Board's Regional Director for Region 4 copies of the aforesaid notice for posting by the Employer at each of its locations involved herein, if the Employer desires to post said notices, on bulletin boards customarily used for notices to employees at those locations.

(d) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO MEMBERS AND EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT fail and refuse to make available copies of the collective-bargaining agreement and the health and welfare plan we have with their employers to unit member employees who request to see these documents.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed under Section 7 of the Act.

WE WILL make available the collective-bargaining agreement and the health and welfare plan we have with South Jersey Detective Agency to unit member Jon Richards who has requested to see such documents.

LAW ENFORCEMENT & SECURITY OFFICERS, LOCAL 40B

## DECISION

### STATEMENT OF THE CASE

HUBERT E. LOTT, Administrative Law Judge: This case came to hearing before me in Atlantic City, New Jersey, on February 17, 1981. The charge was filed by the Charging Party and served on all parties on May 27, 1980.[1] A complaint issued and was served on all parties on July 14. An answer to the complaint from Respondent was received on August 11. An order designating place of hearing was issued and served on the parties on January 21, 1981. The sole issue in this case is whether Respondent violated Section 8(b)(1)(A) of the Act by failing and refusing upon request to furnish Jon Richards with a copy of its collective-bargaining agreement with the Employer and its health and welfare plan. Respondent, in its answer, denies the commission of an unfair labor practice.

At the time the complaint issued Respondent was represented by counsel, who filed an answer on August 11. In its answer Respondent admitted service of the charge, jurisdictional facts sufficient to find that the Employer, South Jersey Detective Agency, is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, that Respondent is a labor organization within the meaning of the Act, and that Joseph LaMania is at all times material Respondent's business manager and an agent of Respondent within the meaning of Section 2(13) and Section (8)(b) of the Act. Neither Respondent nor its counsel appeared at the hearing nor did they file a brief in support of their position in this case.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the brief filed by the General Counsel, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION

The Company, South Jersey Detective Agency, has its principal place of business at 125 North Lafayette Avenue, Ventnor, New Jersey, where it is engaged in the business of providing guard services and security officers for its customers. During the past year, the Company, in the course and conduct of its operations, provided services valued in excess of $50,000 to other enterprises within the State of New Jersey, each of which in turn annually purchased and received goods valued in excess of $50,000 directly from points outside the State of New Jersey. Respondent admits, and I find, that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

Since on or about August 15, 1979, Respondent and South Jersey Detective Agency, herein called the Employer, have been parties to a collective-bargaining agreement covering a unit of all security officers at the Employer's facility located in Ventnor, New Jersey. The Charging Party, Jon Richards, had been employed as a security guard by the Employer from November 1, 1979, to approximately March 15. Pursuant to the collective-bargaining agreement, Richards became a member of Respondent on the date of his employment with the Em-

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[1] All dates are in 1980 unless otherwise stated.

ployer. Dues of approximately $2 per week were deducted from his wages. When Richards became a member of Respondent, he did not receive a copy of the contract or the health and welfare plan. Initially he requested the documents from Colon, the director of the Employer, who referred him to Respondent's business agent, Joseph LaMania. Richards requested the documents from LaMania in approximately December 1979, January, and March. In each instance, LaMania told Richards that the documents would be forthcoming. Richards never received the copy of the contract or the health and welfare plan nor was he ever shown these documents by Respondent or anybody else. Richards testified that the reason he wanted to see the collective-bargaining agreement was to find out whether or not he was entitled to payments above the standard rate when he worked holidays or Saturdays. Richards further stated that he wanted to see the health and welfare plan because he had incurred certain medical expenses and expenses for prescriptions and he wanted to determine whether or not he would be reimbursed for these costs under the plan and to determine the extent to which he was covered for these medical expenditures under the plan. Richards testified that he incurred expenses for prescriptions, doctor visits, and a pair of eyeglasses. When he discussed the matter with LaMania, the business agent told him to send the bill to him. Richards complied with LaMania's instructions and testified that he was not reimbursed for his eyeglasses until after he filed a charge in this case and never received any reimbursement for the other bills he had submitted to LaMania. Richards testified that to this day he does not know whether or not he is covered for those expenditures under the health and welfare plan or the collective-bargaining agreement because he has seen neither. Richards testified that he ceased being a member of the Respondent upon termination of his employment with the Employer in mid-March.

### III. ANALYSIS AND CONCLUSIONS

The General Counsel in his brief argues that where a union has requested the termination of an employee for nonpayment of dues the Board has held that the union has a responsibility of informing an employee of his obligations under the collective-bargaining agreement before the request may be made citing *Local 3036, New York City Taxi Drivers Union, AFL-CIO (En Operating Corp.)*, 204 NLRB 427 (1973). The counsel for the General Counsel submits that the right to be informed of one's rights and obligations under a collective-bargaining agreement and health and welfare plan is a basic right which may be enforced before the employee has to suffer the risk of termination for not fulfilling his obligations.

The General Counsel further argues that the Board has stated that a purpose of the Act is to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce. The Employer has accorded exclusive recognition to the Union for the employees in a bargaining unit, and this recognition has been memorialized in a collective-bargaining agreement. The privilege of acting as an exclusive bargaining representative derives from Section 9 of the Act, and a union which would occupy this statutory status must assume the responsibility to act as a genuine representative of all the employees in the bargaining unit citing *Miranda Fuel Inc.*, 140 NLRB 181 (1963). Therefore, the right of the employees to bargain collectively through representatives of their own choosing, guaranteed under Section 7, becomes an empty right if the bargaining agent fails or refuses to fulfill the obligations imposed upon it by the Act and treats an employee, it is bound to represent, unfairly citing *Local 3036, New York City Taxi Drivers Union, supra* at 427. The General Counsel further argues that the authority vested in Respondent, as an exclusive agent of the employees, leads to employee dependence on the labor organization for not only negotiating his livelihood, but also informing him of his rights and obligations incurred as a result of those negotiations. And that this creates a fiduciary duty that the union deal fairly with employees citing *N.L.R.B.* v. *Hotel, Motel and Club Employees' Union, Local 568, AFL-CIO (Philadelphia Sheraton Corp.)*, 320 F.2d 254 (3d Cir. 1963), enfg. 136 NLRB 888 (1962). The General Counsel argues that accordingly Richards wanted a copy of the collective-bargaining agreement to find out whether he was entitled to extra compensation when he worked on Saturdays and holidays and that he wished to have a copy of the health and welfare plan because he was concerned about whether he was covered by any insurance and whether he would be reimbursed for medical expenses incurred. As the exclusive representative of the employer's employees, Respondent had the fiduciary responsibility to provide Richards with the information sought. Respondent's failure to do so according to the General Counsel was a breach of that responsibility and therefore in violation of Section 8(b)(1)(A) of the Act.

Drawing from cases dealing with violations of Section 8(b)(1)(A) of the Act, certain facts become evident. A union has a fiduciary duty to deal fairly with employees because of its unique position as the exclusive bargaining agent for the employees it represents. The employee must rely on the union to represent him in all manners covered by the collective-bargaining agreement. Moreover, the union has the duty to fairly represent the employees covered by a collective-bargaining agreement. When a union acts in an arbitrary, invidious, or unfair manner it violates that duty and the Act. Given these propositions it would be very difficult not to find a violation of the Act when a union refuses to allow an employee an opportunity to inspect the collective-bargaining agreement which controls the terms and conditions of his employment. The only way an employee can know whether or not he is being represented fairly, or at all, is by examining the contract which sets forth his rights and duties. Failure to grant that right strikes at the very heart of an employee's Section 7 rights. Since 1959 the law has recognized this basic right of employees through the Labor-Management Reporting and Disclosure Act. Title I, Section 104, of that Act reads:

> It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each collective bargaining agreement made

> by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer copies of any such agreement made or received by such labor organization, which copy shall be available for inspection by any member or by any employee whose rights are affected by such agreement. The provisions of Section 210 shall be applicable in the enforcement of this section.

Section 210 of that Act reads:

> Whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the secretary may bring a civil action for such relief (including injunctions) as may be appropriate. Any such action may be brought in the district court of the United States where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

These sections clearly set forth an employee's rights with respect to obtaining a copy of the collective-bargaining agreement and appear to provide an adequate remedy for any employee that wishes to contact the Secretary of Labor or his representatives, who are charged with the duty of enforcing them. For this reason alone, I will dismiss the above complaint.

## CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not been found to have violated Section 8(b)(1)(A) of the Act because of the reasons stated above.

[Recommended Order for dismissal omitted from publication.]